

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CONSUMER FINANCIAL PROTECTION
BUREAU,

Plaintiff,

v.

COMERICA BANK,

Defendant.

Case No. 3:24-cv-3054-B

Judge Jane J. Boyle

**DECLARATION OF JENNIFER GEHR
IN SUPPORT OF DEFENDANT COMERICA BANK'S MOTION TO DISMISS**

I, Jennifer Gehr, declare and state as follows:

1. I am the Senior Vice President, Government Electronic Solutions at Comerica Bank. I have been in that position since December 2023. I have personal knowledge of the facts herein and/or have acquired knowledge through reasonable investigation sufficient to support a basis to declare the matters set forth herein and, if called upon to testify under oath, I could and would competently testify thereto.

2. Attached hereto as Exhibit "A-1" is a true and correct copy of Terms of Use sent to Direct Express cardholders in January 2020 setting forth the terms governing their use of the Direct Express debit card.

3. The language in the “Pre-Authorized Payments” paragraph (section III.B.2) of the Terms of Use was substantively the same for all versions of the Terms of Use sent to Direct Express cardholders that contained the instruction to contact the merchant.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is being executed this 21st day of February, 2025, in Mequon, WI.

Jennifer Gehr

Jennifer Gehr

EXHIBIT A-1

TERMS OF USE FOR YOUR DIRECT EXPRESS® DEBIT MASTERCARD® CARD

You have requested to receive certain federal government benefits by a Direct Express® Debit Mastercard® Card ("Card") issued by Comerica Bank ("us, we"), rather than receiving a check or direct deposit to your checking or savings account. If you do not agree to accept the Card under these Terms, do not activate your Card. Instead, dispose of it by cutting it in half, notify Customer Service at the number below, and contact the agency paying your benefits to make other arrangements for receiving future benefit payments.

Keep these Terms of Use ("Terms") and the other information you received about the Card in a safe place with your other important documents but do not keep your PIN with your Card. These Terms describe your rights and our rights regarding your Card, the use of your Card, and your Card Account.

BY ACCEPTING THIS CARD YOU AGREE TO THESE TERMS:

I. Definitions:

Agency. The Federal Government Agency that pays your Benefits.

ATM. Automatic Teller Machine displaying the Mastercard® logo or Mastercard® ATM Alliance Logo.

Benefits. The Federal Government payments you receive electronically from the Agency.

Business Day. Monday through Friday, excluding federal holidays.

Card. The Direct Express® Debit Mastercard® Card or its card number issued by Comerica Bank that is used to access funds in your Card Account. Access in some cases requires the use of your PIN.

Card Account. The account held at Comerica Bank to which your Benefits are electronically transmitted by the Agency and which you access by the use of your Card. You are the owner of the funds in the Card Account. The funds are FDIC insured to the maximum amount permitted by law.

PIN. The Personal Identification Number that you select.

Transaction. A purchase, cash withdrawal, cash back, cash advance, merchant credit, Benefit deposit or other transaction made with your Card.

II. Getting Started

A. Activating Your Card & Selecting a PIN

- By accepting this Card, you agree to call Customer Service at the number below to select your PIN and activate your Card. See the enclosed Direct Express® Debit Mastercard® Card brochure for more information.
- Keep your PIN in a safe place. Do not write it on your Card or keep it near your Card.

B. When Your Funds are Available

- Once you have activated your Card and selected your PIN and we have received and credited funds from the Agency to the Card Account, you can begin using your Card. These funds are usually available the same Business Day we receive them.
- If the Card Account is credited with an amount you are not entitled to receive, the amount may be deducted from the Card Account without prior notice to you. If the incorrect amount is from the Agency and you used those funds, the Agency can reclaim those funds. If we incur a loss as a result of either of these situations, we may recover those funds from you or your estate. (See Section XI, "Adjustments to Your Card Account")
- You may not deposit funds to your Card Account. Except for credits from merchants (for returns or adjustments), only the Agency may add funds to the Card Account.

III. Using your Card

A. General Use of your Card

- You can use your Card to pay for merchandise or services from any merchant that accepts Mastercard® debit cards. You can also use your Card at ATMs that display a Mastercard® logo. There are no Card fees for many of these Transactions. (See Section X, "Fees")
- To use your Card at ATMs or to get cash back when using your Card to make purchases, you must use your PIN. For other transactions, you should select "credit" and you may be asked to sign the sales receipt. Selecting "credit" does not mean that we or the Agency are lending you money.
- The amount of each Transaction will be deducted from your available Card Account balance along with any applicable fees (See Section X, "Fees") You should ensure that you have enough available funds in the Card Account to cover the Transaction and prior Transactions. You may not overdraw your Card Account.

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Funds that are subject to a Transaction Hold (see Paragraph B.1 of this Section III "Transaction Holds") or security freeze (see Paragraph 3 of Section V) are not available for other Transactions.

- If you make a purchase through a Point of Sale ("POS") terminal, a cash refund or adjustment will not be given to you if you return the merchandise. Instead, the merchant will process a credit transaction, and we will apply the credit to your Card Account balance.
- You can instruct us through our automated telephone Funds Transfer service to transfer funds from your Card Account to a personal U.S. bank account. There is a fee for each transfer (See Section X, "Fees"). Transfers generally take three (3) Business Days.
- Instructions to make a telephone transfer or bill payment that are received after our cutoff hour or on a non-Business Day will be considered received as of the next Business Day. Once a transfer or payment instruction has been confirmed by us, you cannot cancel the Transaction.

B. Transaction Holds & Preauthorized Payments

- Transaction Holds.** For some Card purchases, such as car rentals and hotel accommodations, the merchant may request authorization in advance for an estimated amount. If the authorization is approved, we place a temporary hold ("Transaction Hold") on your funds for the estimated amount of the purchase so that we can ensure that sufficient funds are available when the purchase is completed. Until the Transaction finally settles or we determine that it is unlikely to be processed, the held funds will not be available for other Transactions. Once the preauthorized Transaction finally settles, we will charge your Card for the correct amount of the final transaction and will release any excess amount. If we determine that it is not likely the preauthorized Transaction will be processed, we will release the hold and those funds will be available for your use.

- Pre-authorized Payments.** You may use your Card to make regular, pre-authorized payments to merchants by giving your Card Account information to the merchant. If these payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

You have the right to cancel a pre-authorized payment from your Card Account if you call us at the Customer Service number below, or write to us at Direct Express®, Payment Processing Services, PO Box 245998, San Antonio, TX 78224-5998. We must receive your request at least three (3) Business Days before the payment is scheduled to be made. You also must notify the merchant. (Note: If we do not receive your request at least three (3) Business Days before the scheduled payment, we may attempt, at our sole discretion, to stop the payment. However, we assume no responsibility for our failure or refusal to do so, even if we accept your stop payment request). If you call, we may require you to put your request in writing to us and to provide us with a copy of your notice to the payee, revoking the payee's authority to originate debits to your Card Account, within 14 days after you call. If we do not receive the written confirmation within 14 days, we may honor subsequent debits to your Card Account. For individual payments, your request should specify the exact amount (dollars and cents) of the transfer you want to stop, the date of the transfer, and the identity of the payee. Unless you tell us that all future transfers to a specific recipient are to be stopped, we may treat your stop payment order as a request concerning the one transfer only. If you order us to stop one of these payments at least three (3) Business Days before the transfer is scheduled and we do not do so, we will be liable for your losses or damages.

IV. Transactions We May Refuse to Process

A Transaction may not be processed if: (a) the amount of the Transaction exceeds your available balance, (b) the Card has been reported lost or stolen, (c) we are uncertain whether you have authorized the Transaction, or (d) there is a dispute involving your available balance. If you believe you were entitled to receive Benefits in an amount different than what was credited to your Card Account, you should contact the Agency.

V. Problems Using Your Card

- If you experience a problem using your Card at the self-service pump of a gas station, you may have to go inside to pay.
- If you have problems using your Card and you believe you have sufficient available funds for the Transaction, call us at the Customer Service number below.
- If we notice Transactions that are unusual or suspicious, we may place a temporary security "freeze" on your Card while we attempt to contact you.

VI. Record of Your Transactions, Card Account Balance & Know Your Balance

You should check your Card Account balance and Transaction history on a regular basis. The information is available to you free of charge through our Customer Service number and at our web site, www.usdirectexpress.com. For a fee, you can also receive written statements each month.

1. Keep track of your Transactions, including Transaction Holds so that you know your Card Account balance.
2. When you withdraw cash or make a purchase, you can get a receipt for the Transaction. In some cases, the receipt will indicate your Card Account balance. You also can get information about your Card Account balance and a record of your Transactions by calling the Customer Service number below or by visiting www.usdirectexpress.com.
[Note: Balance information may not include Transactions or fees that are still in process and have not yet settled. The balance also may include payments subject to a hold (See Section III, Paragraph B "Transaction Holds") or a security freeze (See Section V, Paragraph 3)]
3. From the website, you can select and print transaction history for up to 12 months for tracking the transactions posted to your Card account. The amount of your available funds is also available on the receipt you get when you make a withdrawal or balance inquiry at certain ATMs. You also have the right to obtain at least 24 months of written history of Card Account transactions by calling us at the number on the back of your card or writing us at Account Services, P.O. Box 245997, San Antonio, Texas 78224-5997. You will not be charged a fee for this information, unless you request it more than once a month.

VII. Card and PIN Security—REPORT LOST OR STOLEN CARD

You agree not to give or otherwise make your Card or PIN available to others. If you do, you will be responsible for any Transactions they conduct, even if they exceed your authorization. For security reasons you agree not to write your PIN on your Card or keep it in the same place as your Card.

If you believe your Card or PIN has been lost or stolen or that someone has or may transfer or take money from your Card Account without your permission, report it by calling the Customer Service number below as soon as possible. You can also write to us at Direct Express®, Payment Processing Services, PO Box 245998, San Antonio, TX 78224-5998 or visit our web site at www.usdirectexpress.com. Calling us is the fastest way to report this loss. Once your Card or PIN is reported to us as lost, stolen or destroyed, your Card will be cancelled and you will have no liability for further Transactions involving the use of the canceled Card.

VIII. Your Liability for Unauthorized Transactions

1. Tell us AT ONCE if you believe your Card or PIN has been lost or stolen. Telephoning us at the Customer Service number is the best way of keeping your possible losses down. You could lose all the money in your Card Account. If you tell us within two Business Days, you can lose no more than \$50 if someone used your Card or PIN without your permission. If you do NOT tell us within two (2) Business Days after you learn of the loss or theft of your Card or PIN, and we can prove that we could have stopped someone from using your Card or PIN without your permission if you had told us, you could lose as much as \$500.

If you can't telephone us, you can write to us at Direct Express®, Payment Processing Services, PO Box 245998, San Antonio, TX 78224-5998. If you are a California resident you will not be liable for the \$500 amount described above in any event. If you are a New York resident, your liability for the unauthorized use of the Card will not exceed \$50.

Also, if the written Transaction history or other Card Transaction information provided to you shows transfers that you did not make, tell us at once. If you do not tell us within 90 days after such information is made available to you, you may not get back any money you lost after the 90 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip, a hospital stay, or the illness of a family member) kept you from notifying us, we will extend the time periods.

2. Once your Card or PIN is reported lost, stolen or destroyed, the Card will be cancelled and you will have no liability for further Transactions conducted with the Card.

IX. In Case of Errors or Questions about Your Card Transactions

1. Call the Customer Service number below or write to us at the address described below as soon as you can if you think an error has occurred in your Card Account. We must hear from you no later than 90 days after your learn of the error. You will need to tell us:
 - a. Your name and Card number.
 - b. Why you believe there is an error, and the dollar amount involved.
 - c. The approximate date when the error took place.

Please provide us with your street address, email address and telephone, as well, so that we can communicate with you.

2. If the error cannot be resolved over the phone, you must provide us written notice of the error within 10 Business Days at Direct Express®, Payment Processing Services, PO Box 245998, San Antonio, TX 78224-5998.
3. We will determine whether an error occurred within 10 Business Days after we hear from you and we will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your Card Account within 10 Business Days (20 business days for new card accounts opened less than 30 days) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 Business Days, we may not credit your Card Account. For errors involving point-of-sale or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question.
4. We will tell you the results of our investigation within three Business Days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents we used in our investigation to make our determination.
5. If you need more information about the error resolution procedures, call us at the Customer Service number below.

X. Fees

We will charge you and you agree to pay the fees and charges described on the List of All Fees included with your Card. See the brochure accompanying your Card for ways to avoid fees. If you believe a fee was charged when it should not have been, call Customer Service at the number below.

XI. Adjustments to Your Card Account

There are occasions when adjustments will be made to your Card Account balance to: reflect a merchant adjustment; resolve a dispute regarding a Transaction posted to your Card; correct deposits or Transactions posted in error; or because the Agency required the return of the Benefits received after you died or were declared incompetent ("Reclamation"). These adjustments could cause your Card Account to have a negative balance.

If you do not have sufficient funds in your account to cover a Transaction or fee, the amount owed may be deducted from future credits to your Card Account and/or we may seek reimbursement from you, your estate or beneficiaries.

Remember, you always have the right to dispute adjustments posted to your Card Account.

XII. Our Liability to You

If we do not complete an electronic fund transfer (Transaction) to or from your Card Account on time or in the correct amount according to these Terms, we will be liable for your losses or damages. There are some exceptions, however. We will not be liable, for instance, if:

- a. Through no fault of ours, you do not have enough available funds in your Card Account to complete the Transaction;
- b. We believe you may not have authorized the Transaction;
- c. Circumstances beyond our control (such as fire, flood, water damage, power failure, strike, labor dispute, computer breakdown, telephone line disruption, or natural disaster) prevents or delays the transfer, despite reasonable precautions taken by us;
- d. The debit card system being used, including but not limited to the ATM or POS terminal was not working properly and you knew about the problem when you started the Transaction;
- e. The Agency did not transmit Benefits for us to credit to your Card Account;
- f. Funds in your Card Account were held as a result of legal process, a Transaction hold or security freeze described in these Terms; or
- g. The Transaction could not be completed because your Card was damaged.

XIII. Suspending or Canceling your Card

1. We may temporarily suspend or permanently terminate your use of the Card, including electronic access to your Card Account:
 - a. immediately if you breach any of the provisions of these Terms; we are notified to do so by the Agency; we believe that there has been or may be unauthorized use of your funds, Card or PIN; there are conflicting claims to your funds; you have made more than one claim of unauthorized Transactions; we believe your Card is being used for any unlawful purpose; or we believe you are named as a specially designated national by the Office of Foreign Asset Control or presidential order; or

- b. within 30 days after giving you notice of our intent to suspend or terminate your Card.
2. You may cancel your Card by giving us prior written notice or telephoning us at the Customer Service number below.
3. Termination of your Card does not relieve you of your responsibility to reimburse us for any amounts owed to us under these Terms even if you cancel the Card.
4. You should notify the Agency when your Card is permanently canceled to make other arrangements for receiving your Benefits.

XIV. LEGAL & GENERAL TERMS

1. **Governing Law.** The funds in your Card Account are deemed held in the State of Michigan. Unless a federal law or regulation applies to a specific section of these Terms or use of the Card, these Terms will be governed by and interpreted in accordance with the laws of the State of Michigan. Depending on where you live, you may have additional rights under certain state laws that apply to us and your Card. We will comply with applicable federal and state law.

2. **Limitation on Time to Sue.** An action or proceeding by you to enforce an obligation, duty or right arising under these Terms or applicable law with respect to your Card or Card Account must be commenced within 12 months after the cause of action accrues.

3. **Dispute Resolution, Venue, and Waiver of Right to Jury Trial/Judicial Reference.** If you have a problem with or related to your Card or Card Account, please call Customer Service at the number below immediately. In most cases, a telephone call will quickly resolve the problem in a friendly, informal manner. If however a dispute cannot be resolved informally, you or we may file a court action in the state where you have told us you reside with a court having subject matter jurisdiction.

Unless the law provides otherwise or the claim is brought before a court in the State of California, you and we both agree to give up the right to a trial by jury to resolve each dispute, claim, demand, court action, and controversy ("claim") between you and us arising out of, or relating to your Card and/or Card Account. This includes, without limitation, claims brought by you as a class representative on behalf of others, and claims by a class representative on your behalf as a class member.

For claims brought in a court in the State of California, you and we agree that such claims shall be resolved by a reference proceeding in accordance with the provisions of Sections 638 et. seq. of the California Code of Civil Procedure ("CCP"), or their successor sections, which both of us agree constitutes the exclusive remedy for the resolution of any dispute, including whether the dispute is subject to the reference proceeding. The referee in the reference proceeding (i) shall hear and determine all issues, including but not limited to discovery disputes, (ii) is empowered to enter equitable and legal relief, rule on any motion otherwise permissible under the CCP, and (iii) may issue a decision disposing of all claims which shall be entered by the court as a final, binding and conclusive judgment, subject to appeal. A judicial reference proceeding is a trial decided by a court-appointed referee and not by a jury.

You understand that without this jury trial waiver or agreement to submit claims for resolution by a reference proceeding, you may have a right to a jury trial on such matters, but you nevertheless agree voluntarily to waive that right. You acknowledge that you have had the opportunity to discuss this provision with your legal counsel.

4. **Privacy.** We and our agents, acting on our behalf, collect nonpublic personal information about you (e.g., your name, address, telephone number, social security number, and date of birth) from the following sources: information we receive from you on applications/enrollments forms for the Card; and information about your Transactions with us or with others, including but not limited to the Agency. We do not release personal nonpublic financial information obtained in connection with this Card program about current or former Cardholders to anyone, except: to process and/or enforce Transactions with us and with others; to facilitate your Card enrollment and Agency payments/adjustments; to provide educational materials and other Card program features; as permitted or required by law, regulation, legal process or court order; to report to local, state and federal authorities if we believe a crime may have been committed involving a Card; or as otherwise requested by you. We restrict access to nonpublic personal information about you to our agents and employees who have a need to know that information in order to process your Card and Transactions. We maintain physical electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.
5. **Assignment.** You may not assign your rights or obligations in connection with these Terms or your Card to others.

6. **Legal process.** We may comply with any subpoena, levy or other legal process which we believe in good faith is valid. Unless the law prohibits us, we may notify you of such process by telephone, electronically or in writing. If we are not fully reimbursed for our record search, photocopying and handling costs by the party that served the process, we may charge those costs to your Card Account. We may honor legal process that is served in any manner at any of our offices, including locations other than where the funds or records sought are held, even if the law requires personal delivery at a different location.

Note: Certain benefit payments are protected from garnishment by federal and/or state law, which may impose requirements and limitations on legal process.

A fee of up to \$50.00 may be assessed for the review and processing of estate claims including the distribution of any remaining funds to a deceased cardholder's estate.

7. **Change in terms.** We may add to, delete or change these Terms at any time by providing you with prior notice as required by law.

8. **Severability/Waiver.** If any provision of these Terms is deemed unlawful, void or unenforceable, it will be deemed severed from these Terms and shall not affect the validity and enforceability of the remaining provisions. We may delay enforcing our rights under this Agreement without losing them. Any waiver by you or us will not be deemed a waiver of other rights or the same rights at another time.

9. **Unclaimed Property.** Under certain circumstances, we are required by state law to relinquish the balance in accounts in which there has been no activity for a specified amount of time, such as deposits, withdrawals, balance inquiry or any other Customer initiated contact. The time period for relinquishment, also called escheatment, varies by state. You agree that we are not liable for any loss you may incur due to our good faith compliance with these laws.

10. **Direct Express® Cash Access:** This feature will allow you to obtain cash from your Direct Express® card at Walmart Money Services or Walmart Customer Service with no purchase necessary. All you need is your Direct Express® card, a valid photo ID, and PIN. There are restrictions on cash limits that can be received through this option. This optional service is available in the US and Puerto Rico. No additional Walmart fees apply. Additional authorized retailers may be offered in the future.

The Direct Express® Debit Mastercard® card is issued by Comerica Bank, pursuant to a license by Mastercard International Incorporated. Mastercard® is a registered trademark of Mastercard International Incorporated.

Customer Service: 1-888-741-1115